

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 18, 1999 at 3:25 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 395; HB 461

EXECUTIVE ACTION ON HB 395**Discussion:**

SEN. THOMAS asked **Jim Hill, Division Administrator, Unemployment Insurance Division**, to fill the Committee in on some of the details regarding this bill. **Mr. Hill** is neither for nor against the bill, he is only providing information.

Mr. Hill informed the Committee self-employed workers do not fraternize usually with the Unemployment Insurance Program. When you try to blend the two types of workers together you run into some problems. This bill will help some individuals which were in the example handed out at the hearing. In the example John was a person who is self-employed part time and has covered employment part time. The intent of this bill was a good idea and the **Unemployment Insurance Division** gave the sponsor a lot of input regarding how this bill should be drafted.

He mentioned this bill also affects other people. The worker who is part-time self-employed can draw Unemployment Insurance and will face a better situation. For instance, a seasonal worker in the construction field is laid off because of winter. That person can find full-time self-employment in any field and still go on full-time Unemployment Insurance under this bill.

Mr. Hill continued to say they have got a good thing on one side, but on the other this could create the situation mentioned above. Unemployment Insurance works well 90 plus percent of the time for 90% or more of the people. For some self-employed people it does not work very well.

If the bill is passed, the **Unemployment Insurance Division** will receive more complaints from employers who know that a certain worker who draws this insurance is working elsewhere in self-employment. They usually get these tips that someone is self-employed and getting paid under the table. They will receive complaints from employers who know people are working on self-employment. **Mr. Hill** said he is has no problem taking those phone calls.

He also informed the Committee some people are interested in the Unemployment Insurance Trust Fund. This fund will see an increase in costs if this bill is passed. Benefits are reduced for somebody who draws Unemployment Insurance then finds self-employment. If a worker were to draw Unemployment Insurance at \$200 per week, then found self-employment, they will be allowed to draw the first 25% of self-employed wages and this will not

reduce their claim. The first \$50 reported as earnings is not counted. After that, the benefit amount is reduced 50 cents on the dollar. If they are earning a lot of money on self-employment, eventually they will get to the point they won't draw any Unemployment Insurance. With this bill, there will be a larger cost to the Trust Fund, but **Mr. Hill** does not believe it will be substantial. The Trust Fund will remain whole because of Montana law. When it draws down to a certain point, they increase the costs to employers. He doesn't think the people who will draw this will have a significant impact on the Unemployment Insurance Trust Fund.

SEN. THOMAS asked if he got laid off from seasonal work and reverted to a self-employed job, and if he earns as much as he wants and could be earning much more than before, would they pull the Unemployment Insurance?

Mr. Hill responded they could. Unemployment Insurance does not make anything 'whole'. The most a person can draw is \$246. per week. It is not that people are getting rich on Unemployment Insurance.

SEN. BERRY asked if the 25% formula was the formula used in the two examples handed out at the hearing.

Mr. Hill answered, 'yes'.

CHAIRMAN KEATING stated the formula was that the self-employment income was used to reduce the amount. He asked what the difference between a part-time worker and seasonal worker is.

Mr. Hill responded from his perspective a part-time worker works more than 40 hours per week and a seasonal worker is typically someone in the construction field or logging.

CHAIRMAN KEATING asked if a construction worker who is working full-time and seasonably eligible for unemployment. How is his unemployment treated during that season?

Mr. Hill responded his seasonal income will determine what his weekly benefit amount is. A construction worker is probably making pretty good money, so he would probably receive \$246 per week. The longer he works during a season, the longer he can draw.

CHAIRMAN KEATING commented they do go to work in the off-season at something else, so do they report those self-employment benefits?

Mr. Hill stated regarding the people who are full-time employees who are laid off seasonally, some will find employment and will report their income. Their benefits are then reduced accordingly. The other worker is the one who won't report it at all. It is virtually impossible to find those people. The only way this is accomplished is from tips. Their fraud unit consists of a couple of people. That underground economy for people who find self-employment exists, and they do not touch most of those people.

SEN. COCCHIARELLA asked **Mr. Hill** to tell the Committee about the meetings he had with **REP. FACEY** and the efforts to try to come up with solutions to the other end of this problem.

Mr. Hill reported **REP. FACEY** approached them and asked if they had a 'fix' to this problem. They met with **REP. FACEY** for quite a period of time and he came up with one solution which they both agreed would not work. That was to use Schedule C. He said we should give this Unemployment Insurance on self-employed workers which will not work. For instance, the construction worker would file a Schedule C and declare some of that self-employment so they establish themselves as being self-employed part time. A construction worker could file for years under this situation.

Another suggestion had to do with the Independent Contractor exemption. Part of the bureaucracy of this for the worker suggests they need to go to the Unemployment Relations Division and receive an Independent Contractor exemption, which costs \$25. Then they are established as an Independent Contractor. That would establish the self-employment situation. That did not work either.

SEN. ELLIS asked **Mr. Hill** if he had any idea of the numbers of people who would benefit from this program. How many people are in the construction industry who are self-employed in the winter time?

Mr. Hill responded they have no statistics on this.

SEN. THOMAS inquired if someone is self-employed and makes a good living, if they went to work at a ski resort and got laid off at the end of that season and still have a normal, good income from their self-employment, would they receive Unemployment Insurance.

Mr. Hill answered under current law probably not but with the bill he believed they would. They wouldn't have to report their self-employment income and would be exempted at this point. They probably wouldn't make much money at the ski hill because it isn't open that long.

CHAIRMAN KEATING explained he did not believe this bill would enhance the seasonal worker one way or the other. They either have unreported income or they are not reporting all of what they make. The construction people make large hourly wage and that impact is already on the fund. This bill is not going to increase that to any degree. The people who are doing part-time work to subsidize their self-employment, and want to be self-employed full time but it hasn't built up to the point they can quit a part-time job, are taking low-paying part-time jobs to supplement their unemployment. If they are laid off from that part-time job, they are penalized by the self-employment income which stacked up next to the seasonal worker situation he would say that person is an honest guy trying to get along and his employer has paid those benefits for the very purpose of covering them if he gets laid off. He is entitled to that and shouldn't be penalized for his self-employment income. There are not too many of these people.

Regarding the people who work at ski hills, that is \$4 or \$5 per hour for three or four months and the benefits are not that great. He would like to see this bill pass, give it a couple of years to see if it works, then change it if it doesn't. He thinks people could get angry about being penalized for working, then begin lying about it. In order to get those unemployment benefits to subsidize a self-employment, people are not going to report what they get. That causes more work for the Department for what little money they get. On the other hand if he is encouraged to get out and be self-employed full time, he will make more money and pay more taxes and do a better job.

SEN. MCNUTT expressed he thinks as an employer, he is always aware of what the Unemployment Compensation fund is. The impact may be those folks getting a lot of calls from the employers who really complain about this. If an employer has an employee he has laid off who is working under the table as self-employed, the presumption is those rates will be less. He thinks the Department should be able to tell them how much of this will happen.

CHAIRMAN KEATING asked **Jim Hill** if the man who is laid off from part-time employment can draw for about 13 or 26 weeks.

Mr. Hill responded the length depends upon how many weeks he was working.

CHAIRMAN KEATING inquired if during that time he has to be available to take another part-time job.

Mr. Hill stated that person has to be actively seeking work. They need to be available for full-time work.

SEN. THOMAS expressed it doesn't take a lot to influence the cost of an individual business if it is a small business. It doesn't take much activity to influence rates significantly. He said he had concerns about this bill and if the Committee decides to pass it he would like to see a statement that the Legislature look at it again in a couple years.

Motion: **SEN. BARTLETT** moved that **HB 395 BE CONCURRED IN.**

Motion: **SEN. THOMAS** moved that **A TWO-YEAR SUNSET AMENDMENT BE ADOPTED EXHIBIT(las61a01).**

Discussion:

SEN. BARTLETT stated sunsets have their uses but she does not believe this is an appropriate bill for a sunset. Business taxpayers are interested in stability and people who have to rely on Unemployment Insurance are interested in stability in that program as well. Regardless, the employer has paid in on the wages that individual has earned and funded some benefits in the event that individual needs them because the employer lays them off due to lack of work or other reasons. It seems to her if this particular approach creates serious enough problems that it needs to be looked at again, they will hear about that. But a sunset should not be a part of the bill.

SEN. THOMAS explained that way they are forced to look at it rather than when a problem occurs. They do not know for sure what will happen with this program. If there is ever a time for sunset, this is the time.

SEN. ELLIS said he wouldn't support the bill without a sunset.

SEN. COCCHIARELLA asked **Jim Hill** if they put a sunset on this bill and it is in the middle of a person's period of collection, would they continue to receive their benefits.

Mr. Hill answered those who are already on a claim would continue and those who file the day after may be out.

CHAIRMAN KEATING thought they would not be cut off, but as of July 1st, 2001, their unemployment income would be deducted from

the formula again. The next session will either remove the sunset or let it stand.

Mr. Hill felt they will always upset someone with this situation. Right now most people file their claims through the phone system, so their phone message will change on July 1.

Eddye McClure explained when the 2001 session begins, if nothing is done this sunset will terminate this legislation.

SEN. MCNUTT remarked without the amendment he doesn't think he can support the bill either.

Vote: Motion that **THE AMENDMENT (EXHIBIT 1) BE ADOPTED** carried 5-4 with **SEN. BARTLETT, SEN. COCCHIARELLA, SEN. KEATING** and **SEN. WILSON** voting no.

Vote: Motion that **HB 395 BE CONCURRED IN AS AMENDED** carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 36 - 42}

EXECUTIVE ACTION ON HB 461

CHAIRMAN KEATING informed the Committee this bill is for inspector's who issue citations and collect fines from persons who fail to display their plumber's license or their electrician's license at the job site. The counties, states, municipalities, code inspectors, etc. do not want to be involved in this. The plumbers and electricians have agreed to amendments **EXHIBIT(las61a02)** and **EXHIBIT(las61a03)**. These amendments eliminate the state, municipal and county building inspectors. The only inspectors who would be given this authority to issue citations and collect fines would be the inspectors from the Board of Plumbers and from the Board of Electricians. The amendments also leave the listed fines in the codes rather than allowing the Board to establish fines by the rule. There is also an amendment which states any fines collected must go to the State General Fund. That way the boards cannot be accused of building their coffers. They will have to take care of their administrative costs on their own. If next session they would like to plead for some funding out of the fines for administration, they can do so. **EXHIBIT(las61a04)**

Motion: **SEN. COCCHIARELLA** moved that **HB 461 BE CONCURRED IN.**

Motion: **SEN. THOMAS** moved that **THE AMENDMENTS BE ADOPTED.**

Discussion:

SEN. WILSON asked **CHAIRMAN KEATING** what he was doing about the fines.

CHAIRMAN KEATING reported the fines are in the bill on page 7. The first offense is \$100 and then \$250 and \$500. The fines will stay in statute, not by rule. It is not a good idea to give boards the authority to establish the level of fines by rule. There have been some nasty things which have happened in the past and people are very unhappy about them. Also, like all the other agencies who assess fines, the fines go into the General Fund and they get their administration expenses through the normal appropriations process, except for the court system. The court system keeps their fines.

SEN. COCCHIARELLA asked if the amendments **CHAIRMAN KEATING** handed out are similar to the amendments from the Board of Plumbers.

Eddye McClure answered they are very similar, they do the same thing except **CHAIRMAN KEATING** has not used their proposal in their amendment number 13. That proposal was to take the fines out of statute and have them determined by the board. Also, the fees which are collected go to the board, but not the fines.

SEN. COCCHIARELLA explained she had a bill last session which asked the cities and counties to check on licensure when inspections take place. That is now law. **{Tape : 1; Side : B; Approx. Time Counter : 42 - 47}** She said to take these entities out of law is a slight objection to this amendment. Part of the job of those people at the local level is to make sure people are licensed to do that job.

CHAIRMAN KEATING responded the Department of Commerce stated although they did not want to be required by the statutes to do this, they would still follow the policy if their inspectors see somebody in the workplace who is not licensed, they will notify the department for whom they work. The Department of Commerce will then notify the Board of Plumbers or Board of Electricians, then those inspectors can investigate. Those non-licensed workers will be reported through that procedure, rather than through the statutes.

SEN. COCCHIARELLA said she doesn't trust them to do that.

SEN. MCNUTT thought this is the right thing to do because he has a concern if there is not a mechanism to enforce collection of fines, the money may not go to the state. He thinks there may be a big fight with the counties and cities.

Motion/Vote: SEN. COCCHIARELLA moved that HB 461 BE ADOPTED.
Motion carried 8-1 with SEN. COCCHIARELLA voting no.

Vote: Motion that HB 461 BE CONCURRED IN AS AMENDED carried 8-1
with SEN. MCNUTT voting no.

ADJOURNMENT

Adjournment: 4:12 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las61aad)